

**OSTER**  
**Researching Services**

12897 Colonial Dr. • Mt. Airy, Md. 21771

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No.

Date OCT 20 1986

Fee \$ 10.00

RECORDATION NO. 15078 Filed & Recorded  
Washington, D. C.

OCT 20 1986 10:00 AM

October 20, 1986

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee  
Interstate Commerce Commission  
12th & Constitution Avenue  
Washington, D.C. 20423

Dear Ms. Lee:

Please find enclosed a Lease Agreement dated October 5, 1986,  
to be filed as an original document.

Lessor: Norman C. Schultz  
c/o GATX Leasing Corporation  
Four Embarcadero Center  
San Francisco, CA 94111

Lessee: Helm Financial Corporation  
One Embarcadero Center  
San Francisco, CA 94111

A description of the railroad equipment is attached. Thank  
you for your assistance.

Sincerely,

*Mary Ann Oster*

Mary Ann Oster  
Research Consultant

Enclosures

OCT 20 9 52 AM '86  
MOTOR OPERATING UNIT  
100 OFFICE OF  
THE SECRETARY

*C. Oster* — *Mary Ann Oster*

# SCHEDULE A

LOCOMOTIVE NUMBER		BUILDER	TYPE	HORSEPOWER	DAILY RENTAL RATE	CASUALTY VALUE
MP	ICG					
3072	5072	EMD	SD40	3000	150	\$95,000
3073	5073	EMD	SD40	3000	150	95,000
3074	5074	EMD	SD40	3000	150	95,000
3075	5075	EMD	SD40	3000	150	95,000
3076	5076	EMD	SD40	3000	150	95,000
3078	5078	EMD	SD40	3000	150	95,000
3079	5079	EMD	SD40	3000	150	95,000
3080	5080	EMD	SD40	3000	150	95,000
3081	5081	EMD	SD40	3000	150	95,000
3082	5082	EMD	SD40	3000	150	95,000
3084	5084	EMD	SD40	3000	150	95,000
3086	5086	EMD	SD40	3000	150	95,000
3087	5087	EMD	SD40	3000	150	95,000
3088	5088	EMD	SD40	3000	150	95,000
3089	5089	EMD	SD40	3000	150	95,000

Interstate Commerce Commission

Washington, D.C. 20423

10/20/86

OFFICE OF THE SECRETARY

Mary Ann Oster  
Oster Researching Services  
12897 Colonial Drive  
Mt. Airy, Md. 21771

Dear Ms. Oster:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/20/86 at 10:00am, and assigned re-recording number(s). 15078

Sincerely yours,

*Noreta L. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

OCT 20 1986 10:00 AM

LOCOMOTIVE LEASE AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS LEASE made and entered into this 5th day of October, 1986, by and between Norman C. Schultz, an individual, hereinafter called "Lessor", and Helm Financial Corporation, a California corporation, hereinafter called "Lessee".

## LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lease: Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the locomotives described in Schedule A attached hereto and made a part hereof, hereinafter called "Locomotive(s)", upon the terms and conditions herein set forth. Lessor acknowledges that Lessee intends to sublease (the "Sublease") the Locomotives to the Illinois Central Gulf Railroad (the "Sublessee") and hereby grants permission for such Sublease on terms and conditions acceptable to Lessor. Lessee shall provide Lessor with a copy of the executed Sublease. The Lessee or, after acceptance under the Sublease, the Sublessee may stencil its identification on the Locomotives so long as it removes same upon expiration or termination of this Lease or the Sublease, as the case may be. Notwithstanding any sublease, Lessee remains liable for fulfilling all terms and conditions of this Lease commencing on the date hereof and ending on the return of the Locomotives pursuant to Section 5 or 19 hereof.

2. Inspection and Acceptance: Lessee hereby accepts the Locomotives on the terms and conditions of the Lease on the date hereof. Lessor shall deliver said Locomotives, at Lessor's expense, to Lessee at the Illinois Central Gulf/Missouri Pacific Railroad Interchange at Kansas City, Missouri or such other mutually agreed upon location. Sublessee shall, within ten (10) days of the delivery to Lessee of each Locomotive, inspect each Locomotive and determine if the Locomotive is in good order and condition; each Locomotive found to be in good order and condition shall immediately become subject to the Sublease. Acceptance of each Locomotive shall be confirmed in writing or by telex within three (3) days after such acceptance. If a Locomotive is not accepted by Sublessee under the Sublease, it shall, at Lessor's option and free of charge, be returned to Lessor at the Illinois Central Gulf/Missouri Pacific interchange, Kansas City, Missouri or delivered to National Railway Equipment Company, Dixmoor, Illinois. If delivered to National Railway Equipment Company, Lessee shall cause National Railway Equipment Company to store the Locomotives at Lessee's cost and Lessor's risk except for vandalism for up to ninety (90) days. Lessee shall be liable for the risk of loss resulting from vandalism during such storage period.

3. Rental: Lessee shall pay to Lessor as rental for each Locomotive the amount stipulated in Schedule A for each day or

1970

1971

1972

each fraction thereof prorated and rounded to the next hour from the time that Locomotives are accepted by Sublessee and shall remain subject to the Sublease, until same is returned to Lessor pursuant to Sections 5 or 19 of the Lease. After such acceptance by Sublessee, Lessor shall render a monthly bill to Lessee for said rental and Lessee shall pay same within fifteen (15) days of receipt thereof. Payment of Rent will be directed to the address specified in Section 12.

4. Term: Upon the completion of one hundred twenty (120) days from the average date of acceptance by the Sublessee, this Lease may be terminated by either party hereto furnishing thirty (30) days prior written notice to the other party hereto. In order to terminate this Lease at the expiration of the initial 120 day term, either party must give written notice no later than the 90th day after the Rent Commencement Date.

5. Warranties and Representations: LESSOR MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND RESPECTING THE LOCOMOTIVES, EXCEPT AS SPECIFIED IN THIS SECTION 5, WHETHER STATUTORY, WRITTEN ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE LOCOMOTIVES, PURSUANT TO THIS AGREEMENT TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY LOCOMOTIVES. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Notwithstanding the above, should any Locomotive during the first one hundred twenty (120) days of the Sublease experience any failure of the turbocharger, main generator (AR-10 alternator), air compressor or a major engine failure (failure or scoring of the crankshaft or damage requiring repair to the engine block) except as a result of negligence or misuse by Lessee or Sublessee, then said Locomotive shall be terminated from this Lease, rental shall cease as of the time of the failure and the Locomotive will be returned to Lessor subject to the terms of Section 19; provided, however, that Lessor may at its option and expense, cause such a Locomotive to be repaired and returned to Sublessee. On the date of such return, the Locomotive will again become subject to the terms of this Lease and the Sublease as if it had not been terminated pursuant to this Section 5. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

6. Recordkeeping; Inspection: Lessee agrees to keep and maintain and make available to Lessor such record of its and Sublessee's use, operation, inspection and repair of any Locomotive leased hereunder and under the Sublease as Lessor or its agent's

representatives, successor or assigns may reasonably request. Lessor, by such agent or agents as it may designate, shall have the right, or Lessee shall arrange for Lessor to have the right, at all reasonable times to go upon the property of the person in possession of the Locomotives to inspect any Locomotive.

7. Loss or Destruction: Lessee agrees it will be solely responsible for any loss, damage or destruction of any Locomotive leased from Lessor while subject to this Lease. In case any of the Locomotives during the term of the Lease period become lost, destroyed or damaged beyond repair from any cause whatsoever, rental with respect to any such Locomotive shall cease immediately, but in such case Lessee agrees to pay Lessor in accordance with the casualty amount as identified in Schedule A within thirty (30) days of the event.

8. Maintenance: Lessee shall make, or cause to be made, at its expense, all repairs necessary to maintain the Locomotives in good operating condition throughout the term of this Lease. Lessee must maintain the Locomotives in accordance with commonly accepted industry maintenance procedures and standards. Except as otherwise provided herein, at the expiration of this Lease, Lessee agrees to return the Locomotives to Lessor in the same condition as received less normal wear and tear.

9. Liability Insurance: At its own expense, Sublessee shall maintain the following insurance with respect to each Locomotive: Comprehensive General Liability Insurance including but not limited to contractual liability insurance with limits of at least \$5,000,000 bodily injury, including death, and \$5,000,000 property damage. Any policies with respect to such insurance shall (1) be with an insurance carrier acceptable to the Lessor but Lessor's acceptance of any carrier designated by Lessee will not be unreasonably withheld, (2) name the Lessor and the Lessee as assureds, as their interests may appear, and (3) provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or material modification. The Lessee shall, prior to the first delivery date and annually thereafter on the anniversary thereof, furnish appropriate evidence of such insurance. Lessor grants Lessee the right to self insure employing sound actuarial principals maintaining the limits as stated above.

Effecting or obtaining any insurance coverage required to be carried pursuant to the above does not excuse or relieve Lessee from the due performance and fulfillment of any of its other obligations hereunder.

10. Indemnity: Lessee does hereby release, indemnify and save harmless Lessor, its agents, successors and assigns, from and against any and all liability, loss, cost, damage, charges and expense which Lessor may incur, suffer or be in any way subjected

to, resulting from or arising out of injury to or death of any person or persons whomsoever, and the loss or destruction of or damage to any property whatsoever of any persons, firm or corporation, including but not limited to the property of the parties hereto or in the claims, demands, or actions for such loss, injury or damage, caused by, growing out of or in any way connected with the lease, Sublease, possession, use or operation of said Locomotives by Lessee or Sublessee whether attributable to the fault, failure or negligence of Lessor or otherwise. The foregoing release and indemnification shall apply to matters or things occurring only during the time Locomotives are in the actual or constructive possession of Lessee or Sublessee and/or subject to this Lease or any sublease. The obligation to pay any indemnity amount shall continue beyond the expiration or termination of this Lease until all such amounts are paid in full.

11. Assignment: Except as provided in Section 1 hereof, Lessee shall not assign or sublet its interest, or any part thereof, under this Lease, or permit the use or operation of any Locomotive subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries, without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroad other than Lessee's under standard run-through and power pooling arrangements. Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all the rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor, until such time as notice of such assignment is given to Lessee in accordance with Section 12.

12. Notice: Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices to Lessor shall be sent to:

Madison Properties  
c/o GATX Leasing Corporation  
Four Embarcadero Center  
San Francisco, California 94111  
Attention: Mr. John B. West  
Vice President

or to such other address as Lessee may from time to time indicate by written notice to Lessor.



(b) Notices to Lessee shall be sent to:

Helm Financial Corporation  
One Embarcadero Center, #3320  
San Francisco, CA 94111  
Attention: President

Or to such other address as Lessor may from time to time indicate by written notice to Lessee.

13. Compliance with Law; Operation and Liens: Lessee shall comply with FRA and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use and operation of the Locomotives during the Lease term.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor.

Lessee will not permit any liens or encumbrances to be placed in the Locomotives and will promptly take action, at its expense, to remove and discharge any liens that may be placed on the Locomotives.

14. Quiet Enjoyment: So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

15. Late Charges: Delinquent installments of rent shall bear interest at the rate of 1 1/2% per month if not prohibited by law, otherwise at the highest lawful contract rate.

16. Filing and Administration: Lessee will promptly cause this Lease to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 for the protection of Lessor's title and will furnish Lessor and copy thereof as filed within ten (10) days after the date hereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

17. Taxes: Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Locomotives including without limitation amounts payable under Section 3 hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Lessor or Lessee. The obligations under this Section 17 shall survive the expiration of the term of this Lease.

18. Default: If the Lessee, after five (5) business days' notice of default, shall fail to carry out and perform any of the obligations on its part to be performed under this Agreement, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessee, then, and in any of said events, Lessor shall have all rights available to it at law or in equity, including without limitation the right immediately to repossess the Locomotives, to remove the Locomotives from Lessee's service, to terminate this Agreement, and recover any and all damages sustained as a result of Lessee's default. If Lessor shall terminate this Agreement pursuant to this Section, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given are not exclusive and are in addition to all other rights and remedies provided by law or in equity.

Should any proceedings be instituted by Lessor for monies due to Lessor hereunder and/or for possession of any or all of the Locomotives or for any other relief, Lessee shall pay Lessor's attorney's fees and expenses. In addition to any remedies provided herein, Lessor shall have all the rights provided to a Lessor under Section 1168 of Title 11 of the United States Code and any successor provision thereto.

19. Storage and Return: Upon the termination or expiration of this Lease, Lessee shall store the Locomotives in a secure area at any interchange of ICG for a period of ninety (90) days at the expense of Lessee but at the risk of Lessor with the exception that Locomotives will be returned by Lessee and at Lessee's expense and risk in the condition described in Section 8 and with all parts in tact and free of damage caused by vandalism; provided, however, that such condition shall not be required with respect to parts warranted under Section 5 hereof if Lessor does not elect to repair the same and again place the Locomotives under the Lease as provided in Section 5. The condition pursuant to Section 8 will be determined by joint inspection, and Lessor may at Lessor's option during the storage period, require Lessee to load test for one hour any or all Locomotive at a cost to Lessor not to exceed \$400.00 per Locomotive. Upon Lessor's

direction, Lessee shall deliver Locomotives to any interchange of ICG at no cost to Lessor.

20. Purchase Option: So long as Lessee is not in default hereunder, it shall have the option at any time prior to the expiration of this Lease to purchase not less than five Locomotive(s) for \$95,000.00 each less rental accruals of \$70.00 per day per Locomotive paid as rental for said Locomotive. Upon payment in immediately available funds of the above amount by Lessee, Lessor shall deliver to Lessee a Bill of Sale for the Locomotive warranting good title thereto.

20. Miscellaneous: All transportation charges for delivery of the Locomotives to or from the Sublessee shall be borne by Lessor. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations or any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee admits the receipt of a true copy of this Locomotive Lease Agreement.

21. Laws Governing Lease: The Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF the parties hereto have caused this instrument to be executed and delivered as of the date first written above.

NORMAN C. SCHULTZ  
LESSOR

BY  \_\_\_\_\_

TITLE \_\_\_\_\_

HELM FINANCIAL CORPORATION  
LESSEE

BY  \_\_\_\_\_

TITLE President \_\_\_\_\_

# SCHEDULE A

LOCOMOTIVE NUMBER		BUILDER	TYPE	HORSEPOWER	DAILY RENTAL RATE	CASUALTY VALUE
MP	ICG					
3072	5072	EMD	SD40	3000	150	\$95,000
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3080	5080	EMD	SD40	3000	150	95,000
3081	5081	EMD	SD40	3000	150	95,000
3082	5082	EMD	SD40	3000	150	95,000
3084	5084	EMD	SD40	3000	150	95,000
3086	5086	EMD	SD40	3000	150	95,000
3087	5087	EMD	SD40	3000	150	95,000
3088	5088	EMD	SD40	3000	150	95,000
3089	5089	EMD	SD40	3000	150	95,000

STATE OF CALIFORNIA

:

: SS.

COUNTY OF SAN FRANCISCO

:

On this 5th day of October, 1986, before me personally appeared Richard C. Kirchner to me personally known, who, being by me duly sworn says that he is President of HELM FINANCIAL CORPORATION that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

SEAL



*Nancy L. Hoffner*  
Notary Public

My Commission Expires: 1-9-90